

701—107.8(423B) Contacts with county necessary to impose collection obligation upon a retailer.

107.8(1) *Nexus requirements for retailers prior to July 1, 1999, and after June 30, 2005.* Before any retailer can be required to collect the local option sales or service tax, certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. *Quill Corporation v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa that does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; *Quill*, supra. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).

EXAMPLE A. Assume that Dubuque County has a local option tax and Polk County does not. Customer A is located in Dubuque County and Company B in Polk County. A buys office furniture from B with delivery of the furniture to be by common carrier "F.O.B. Dubuque, Iowa." Company B has no employees or property in Dubuque County, solicits no business there, and does not engage in any other activities purposefully directed toward Dubuque County. Thus, Company B engages in no purposefully directed activities in Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County (see rule 107.3(422B)) B cannot be required to collect local option sales tax from A.

EXAMPLE B. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture with delivery "F.O.B. Des Moines, Polk County." Jackson's Furniture House transfers the furniture to a common carrier who transports it to Ms. Wilson in Polk County. Unlike the retailer in Example A above, Jackson's Furniture House actively solicits business in Polk County by way of television and newspaper advertising. It also transports some furniture to Polk County customers in its own trucks, and its employees at times enter Polk County to repair furniture previously sold to Polk County residents. Jackson's Furniture House is obviously engaged in purposefully directed activities toward Polk County (some of the activities involving its physical presence there and some not), and by virtue of those activities is obligated to collect Polk County's local option sales tax.

EXAMPLE C. Assume the same facts as in Example B immediately above except assume that Jackson's Furniture House engages continuously and intentionally in soliciting business in Polk County by way of television and newspaper advertising, but has no "physical presence" in Polk County. Jackson's Furniture House has no employees delivering or repairing furniture in Polk County, and no property in that jurisdiction; for example, no trucks or furniture repair tools. Jackson's Furniture House is still engaged in "purposeful activity" in Polk County consisting of a continuous and widespread solicitation of business which is of such a nature that this activity requires it to collect local option tax on the gross receipts from its sales there.

EXAMPLE D. For the purposes of understanding this example, assume that the whole of Polk County has enacted a local option sales tax. Don's Mail Order House has offices and a warehouse in Kansas City,

Missouri. Don's Mail Order House continuously solicits business in Polk County by way of advertising there on local television and radio and by sending fliers and catalogs to Polk County residents through the mails. However, Don's Mail Order House has no physical presence anywhere in Polk County. It sends no representatives into Polk County for any purpose, owns no property there, and has no independent contractors performing activities on its behalf in Polk County. So, as a result of its solicitations which are purposefully directed at the Polk County market, the due process clause of the Fourteenth Amendment of the United States Constitution does not prohibit Polk County from requiring Don's Mail Order House to collect its tax. However, since Don's Mail Order House is an out-of-state retailer (in contrast to the retailer described in Example C above) with no physical presence in Polk County, the commerce clause of the United States Constitution prevents the county from requiring that Don's Mail Order House collect its local option tax. Under the facts as stated in this example, it would be unconstitutional to require Don's Mail Order House to collect Polk County's local option sales tax.

EXAMPLE E. Assume the existence of the same facts as in Example D except that Don's Mail Order House has a representative with an office located in Polk County whose job it is to solicit and develop business for Don's Mail Order House in the state of Iowa. Because of that representative's presence in Polk County, the commerce clause of the United States Constitution no longer prohibits Polk County from requiring Don's Mail Order House to collect its local option sales tax.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

107.8(2) *Nexus requirements for retailers effective from July 1, 1999, through and including June 30, 2005.* Effective from July 1, 1999, through and including June 30, 2005, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and "delivery," as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information, see the definition of "retailer" as provided in 2003 Iowa Code sections 422.42(13) and 423.1(8) and the definition of "retailer" set out in 2005 Iowa Code section 423.1(42). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.